IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2483 OF 2004

Shri S.K.Rathod, since deceased
through his L.Rs.
Smt.Shantabai Sitaram Rathod
and others. .. .. petitioners.

Vs.

The Dist.Judge, Solapur,
& Others. .. .. Respondents
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Shri Shrishail Sakhare for the petitioners.

Shri Vinay Sonpal, AGP for the respondents.
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CORAM : R.M.S.KHANDEPARKAR &

NARESH H.PATIL, JJ

DATED : 23RD AUGUST, 2006

P.C.

1. Heard. The legal representatives of the original petitioner challenge the order of dismissal solely on the ground that in the course of inquiry, no fair opportunity was given to the original petitioner to defend. The learned advocate appearing for the petitioners has drawn our attention to the application dated 21st November, 2002 wherein the original petitioner had sought adjournment of the inquiry proceedings on the ground that his advocate had not returned from Solapur. It is the contention on behalf

of the petitioners that while rejecting the said application, the inquiry officer proceeded to hold inquiry proceedings, and in the circumstances, the original petitioner could not effectively cross examine the witnesses. Further, attention is drawn to the statement of the original petitioner recorded by the inquiry officer wherein the specific questions were asked on the basis of the testimony of those witnesses. Being so, according to the learned advocate, the fair opportunity was not given to the original petitioner to cross examine the witnesses and to putforth his defence in the matter, and therefore, the inquiry was vitiated.

2. Undisputedly, the original petitioner's application for engaging the advocate to defend his case in the course of inquiry proceedings was rejected much prior to 21st November, 2002. The original petitioner therefore was fully aware on and even prior to 21st November, 2002 that the absence of his advocate could be no justification for adjournment of the inquiry proceedings. Obviously, therefore, rejection of the application for adjournment on the ground of absence of the advocate for the original petitioner was perfectly justified and could not be found fault with in view of failure on the part of the

original petitioner to avail assistance of any representative who could have been engaged by him to assist him to defend his case, and therefore, the inquiry officer was left with no alternative than to proceed with the inquiry proceedings. The records further disclose that there was no objection raised by the original petitioner for such proceedings by the inquiry officer. Indeed, the original petitioner even cross examined the said witnesses. It is also pertinent to note that even after recording of the evidence and the statements of the original petitioner, at no point of time, prior to the submission of the report by the inquiry officer, any attempt was made by the original petitioner to contend that he did not get fair opportunity to cross examine the witnesses or to defend or to putforth his defence in the matter, either on 21st November, 2002 or at any time thereafter. The contention regarding failure on the part of the inquiry officer to give fair opportunity to cross examine the witnesses and to putforth the defence of the original petitioner is, therefore, purely afterthought.

3. As no other point is disclosed or canvassed in relation to the impugned order, there is no substance in the petition, and hence the same is rejected.

(NARESH H.PATIL,J) (R.M.S.KHANDEPARKAR, J)